

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES,

Plaintiff,

v.

CRIMINAL ACTION NO. 1:09CR123
(Judge Keeley)

DOMINIQUE OUTLAW,

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [DKT. NO. 24], AND DENYING AS MOOT
DEFENDANT OUTLAW'S MOTION TO SEVER TRIAL [DKT. NO. 14],
DEFENDANT HEILIGH'S MOTION TO ADOPT CO-DEFENDANT'S
MOTION TO SEVER TRIAL [DKT. NO. 15], DEFENDANT HEILIGH'S
MOTION FOR RELIEF FROM PREJUDICIAL JOINDER [DKT. NO. 16],
AND DEFENDANT HEILIGH'S MOTION TO CONSOLIDATE COUNTS OR TO
DISMISS INDICTMENT FOR MULTIPLICITY [DKT. NO. 17]

On December 7, 2009, the defendant, Dominique Outlaw ("Outlaw"), filed a motion to sever trial from his then co-defendant, Jonathan Heiligh ("Heiligh"). (dkt. no. 14). The following day, December 8, 2009, Heiligh filed three motions: a motion to join in Outlaw's motion to sever trial (dkt. no. 15), a motion for relief from prejudicial joinder (dkt. no. 16), and a motion to consolidate counts in the indictment, or in the alternative, to dismiss the indictment for multiplicity. (dkt. no. 17). On December 11, 2009, pursuant to 28 U.S.C. § 636(b)(1), the Court referred these motions to Magistrate Judge Kaull. (dkt. no. 18).

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The government filed a response in opposition to these motions on January 7, 2010. On January 15, 2010, Magistrate Judge Kaul issued a Report and Recommendation ("R&R") (dkt. no. 24), recommending that Heiligh's motion to join in Outlaw's motion to sever trial from co-defendant be granted (dkt. no. 15), that Outlaw's motion to sever trial be denied (dkt. no. 14), that Heiligh's motion for relief from prejudicial joinder be denied (dkt. no. 16), and that Heiligh's motion to consolidate counts in the indictment, or in the alternative, to dismiss the indictment for multiplicity, be denied. (dkt. no. 17). The R&R also specifically warned that failure to object to the recommendations within fourteen days of receipt of the R&R would result in the waiver of any appellate rights on this issue. No objections have been filed.¹

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-53 (1985); and Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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The Court, therefore, **ADOPTS** the reasoning in the R&R (dkt. no. 24) in its entirety. The Court notes, however, that subsequent to the issuance of the R&R, Heiligh pleaded guilty on February 9, 2010 to count three of the first indictment, and on March 2, 2010, the government filed a superseding indictment charging Outlaw, and Outlaw alone, with aiding and abetting Heigligh in assaulting a fellow inmate in violation of 18 U.S.C. §§ 113(a)(3), 2, and 7(3), and committing two separate counts of assault with a dangerous weapon in violation of 18 U.S.C. §§ 113(a)(3), and 7(3). These developments have rendered all four motions (dkt. nos. 14, 15, 16, & 17) moot, and therefore, the Court **DENIES** them **AS MOOT**.

It is so **ORDERED**.

The Court directs the Clerk to transmit a copy of this Order to counsel of record, and to mail a copy to the defendant, Dominique Outlaw, certified mail, return receipt requested.

DATED: May 17, 2010.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE